IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8087 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

TUKARAM SAKHARAM PAVAR - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 15th March 2000 passed by the Labour Court, Ahmdabad in Recovery Application No.5072 of 1986 whereby the Labour Court directed the petitioner to pay a sum of Rs.18860/-

to the respondent toward payment of overtime.

2. The short facts of the case are that the respondent was working as Rojamdar Watchman with petitioner Department. According to the petitioner, the respondent has never worked over time. However, he filed a recovery application for over time wages after a period of 17 years. Ultimately the Labour Court passed the aforesaid award granting wages of overtime to the respondent.

3. Learned counsel for the petitioner submitted that the respondent workman was working purely on temporary basis and he is not entitled to any overtime wages. He submitted that he being a government servant, as per BCSR rules he is not entitled for over time. Learned counsel further submitted that in fact the respondent has never worked over time. He further submitted that there is a gross delay in preferring the claim. According to the learned counsel for the petitioner though it was not established before the Labour Court that he had worked over time the Labour Court erroneously granted the relief to him.

4. As a result of hearing and perusal of the record it

is clear that even if the respondent workman is a permanent employee he is not entitled for any overtime payment in view of the provisions of Rule 17, which reads as under:

> “17. In any case, it be otherwise distinctly provided the whole time of a Government servant is at the disposal of Government and he may be employed in any manner required under by the proper authority, whether the services required of him are such as would ordinarily be r enumerated from the Consolidated Fund of India or of a State, or from the revenues of a local fund.”

Thus, in view of the provisions of Rule 17 of the BCSR, a government servant shall not claim any other benefits except the benefits which are available under the service conditions.

5. In similar circumstances an order has been passed by this Court on 25.8.2004 in Special Civil Application No.15068 of 2003 wherein this Court has quashed and set aside the award of the Labour Court.

6. Apart from that when the claims are not ascertained,

the Labour Court under section 33-C(2) cannot ascertain and grant payment of over time to the workman. I am therefore of the view that the impugned award requires to be quashed and set aside.

7. In the premises aforesaid, the impugned award dated 15.3.2000 passed by the Labour Court, Ahmedabad, in Recovery Application No.5072 of 1986 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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